

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket No.: 63109 &
63110**

Petitioner:

**PROSPECT 34, LLC & PROSPECT DEVELOPMENT
COMPANY, INC.,**

v.

Respondent:

**GUNNISON COUNTY BOARD OF
COMMISSIONERS.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 25, 2014, Diane M. DeVries and Louesa Maricle presiding. Petitioners, Prospect Development Company, Inc. and Prospect 34, LLC, were represented by Elizabeth A. Dauer, Esq. and Kim Seter, Esq. Respondent, Gunnison County Board of Commissioners, was represented by Arthur Trezise, Esq. Intervener, Reserve Metropolitan District No. 2, was represented by Randall Livingston, Esq.

The subject properties are described as follows:

Prospect Development Company, Inc. properties: see attachment.

**Prospect 34, LLC property: Lot C-34 Prospect at Mt. Crested Butte Phase 1
Schedule Number R042021**

Prospect Development Company, Inc. and Prospect 34, LLC request tax abatements in the form of relief from payment of any taxes levied in excess of 52.676 mills by Reserve Metropolitan District No. 2 for tax year 2012.

PRELIMINARY MATTERS

Prospect Development Company, Inc. and Prospect 34, LLC each filed a Petition for Appeal to the Board of Assessment Appeals (the "Board"). Both entities were represented by the same attorneys, submitted substantively identical pleadings, and presented the same issues on

appeal. Accordingly, the two appeals were consolidated for purposes of the hearing and this Order.

Reserve Metropolitan District No. 2 (“RMD-2”) filed an Application to Intervene in this matter. Pursuant to Rule 22 of the Board’s Practices and Procedures (8 CCR 1301-1), the Board may permit the intervention of another party if the intervention would foster the interests of justice and fairness. RMD-2 presented compelling arguments that the intervention would foster the interests of justice and fairness. The Board finds that it is in the interests of justice and fairness to permit RMD-2 to intervene, and therefore grants RMD-2’s Application to Intervene.

BACKGROUND

Prospect Development Company, Inc. and Prospect 34, LLC (“Petitioners”) are owners of real property within RMD-2. RMD-2 is the special district that levied the taxes that are the subject of these appeals.

In 2001, RMD-2 was formed by the Town of Mt. Crested Butte (the “Town”) under title 32 (the Special District Act) of the Colorado Revised Statutes. As required by Section 32-1-204.5, C.R.S., RMD-2 submitted a Service Plan to the Town for approval. The Town approved the Service Plan on August 15, 2000.

The Service Plan imposes a limit on the number of mills RMD-2 can levy. Specifically, RMD-2 is not to levy more than 50 mills, subject to Gallagher Adjustments.

Despite the Service Plan mill cap, on December 21, 2012, the RMD-2 Board of Directors certified the levy of 55.676 mills, consisting of 50 mills allowed by the Service Plan, 2.676 mills for the Gallagher Adjustment, plus an additional 3.000 mills to finance an appropriation of \$67,720.50 in legal fees. The Gunnison County Board of County Commissioners (“BOCC”) levied the 55.676 mills for collection by the Gunnison County Treasurer. In sum, RMD-2 levied 3.000 mills in excess of the 50 mills cap imposed by its Service Plan.

In March of 2013, Petitioners each filed a petition for abatement with the BOCC, arguing that the 3.000 mills levied in excess of the 50 mills cap violated the terms of RMD-2’s Service Plan, were thereby illegal, and should be abated. On September 17, 2013, the BOCC denied the petitions for abatement. On October 18, 2013, Petitioners each filed a petition with the Board appealing the BOCC’s denial of their petitions for abatement.

ANALYSIS

Pursuant to Section 39-2-125(1) (f), C.R.S., the Board shall hear appeals from decisions of boards of county commissioners filed not later than thirty days after the entry of any such decision when a claim for refund or abatement of taxes is denied in full or in part. As such, the Board has authority to hear Petitioners’ appeals of the BOCC’s decisions. In accordance with Section 39-10-114(1)(a)(I)(A), C.R.S., a taxpayer is entitled to an abatement of taxes if the taxes

in question have been “levied erroneously or illegally.” Petitioners argue that they are entitled to an abatement of taxes under Section 39-10-114(1)(a)(I)(A), C.R.S. because the 3.000 mills levied in excess of RMD-2’s Service Plan were levied illegally.

While Petitioners have submitted argument in favor of their position, they have not presented evidence to the Board that the status of the tax at issue is illegal. Rather, Petitioners and Respondent have asked the Board to resolve the following issue: “*Whether the tax levied by the BOCC was ‘levied erroneously or illegally’ in light of the limitations on the District’s taxing authority.*” (Petitioner’s and Respondent’s Joint Submission Pursuant to BAA Rule 17.)

This issue has already been decided by Judge Steven Patrick of Gunnison County District Court. On October 25, 2013, Judge Patrick issued a preliminary ruling that the 3.000 mills levied in excess of RMD-2’s Service Plan cap were a valid and legal exercise of RMD-2’s authority to levy taxes, and therefore the 3.000 mills were levied legally. (Order Re: Plaintiffs’ Motion for Partial Summary Judgment on Plaintiffs’ Claims for Declaratory Relief, 13CV18 Gunnison County District Court.) The parties of this appeal are also parties to the case before Judge Patrick. The case is ongoing and part of a larger controversy involving the taxes at issue in this appeal.

As noted above, Petitioners maintain that the 3.000 mills were levied illegally. Respondent argues that the Board should follow Judge Patrick’s preliminary finding that the 3.000 mills were levied legally. The Intervener argues that Petitioners have failed to raise a proper statutory ground for abatement and requests that the Board deny the appeals.

Under Section 39-10-114(1)(a)(I)(A), C.R.S. a taxpayer is entitled to an abatement of taxes if the taxes in question were “levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation”. Petitioners’ argument is that the 3.000 mills were levied illegally in light of the mill levy cap in the Service Plan. Judge Patrick determined that the 3.000 mills were levied legally, notwithstanding the mill levy cap in the Service Plan. The Board declines to re-analyze Judge Patrick’s determination. As the tax has been determined to be legal, Petitioners are not entitled to an abatement/refund of taxes.

ORDER:

The petitions are denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of

Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

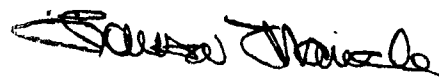
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

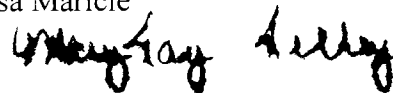
Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 3rd day of July, 2014.

BOARD OF ASSESSMENT APPEALS



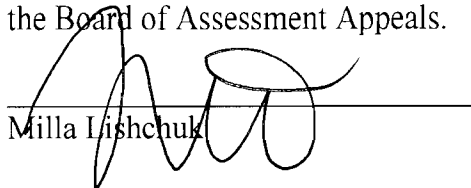
Louesa Maricle



MaryKay Kelley



I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.


Milla Lishchuk

**List of Prospect Development Company, Inc. Properties and Schedule Numbers for Appeal
to the Board of Assessment Appeals**

1. LOT D16 PROSPECT AT MT CB PHASE 2 PLAT #522219;
Schedule Number: R043236
2. LOT D19 PROSPECT AT MT CB PHASE 2 PLAT #552219;
Schedule Number: R043237
3. LOT D20 PROSPECT AT MT CB PHASE 2 PLAT #552219;
Schedule Number: R043238
4. LOT D21 PROSPECT AT MT CB PHASE 2 PLAT #552219;
Schedule Number: R043239
5. LOT D22 PROSPECT AT MT CB PHASE 2 PLAT #552219;
Schedule Number: R043240
6. LOT E1 PROSPECT AT MT CB PHASE 4 PLAT #563222;
Schedule Number: R043687
7. LOT E3 PROSPECT AT MT CB PHASE 4 PLAT #563222;
Schedule Number: R043692
8. LOT E9 PROSPECT AT MT CB PHASE 4 PLAT #563222;
Schedule Number: R043677
9. LOT E10 PROSPECT AT MT CB PHASE 4 PLAT #563222;
Schedule Number: R043678
10. LOT E11 PROSPECT AT MT CB PHASE 4 PLAT #563222;
Schedule Number: R043679
11. LOT E15 PROSPECT AT MT CB PHASE 4 PLAT #563222;
Schedule Number: R043683
12. LOT E16 PROSPECT AT MT CB PHASE 4 PLAT #563222;
Schedule Number: R043684

13. LOT E17 PROSPECT AT MT CB PHASE 4 PLAT #563222;

Schedule Number: R043685

14. LOT E18 PROSPECT AT MT CB PHASE 4 PLAT #563222 ;

Schedule Number: R043689

15. LOT E19 PROSPECT AT MT CB PHASE 4 PLAT #563222;

Schedule Number: R043690

16. LOT E20 PROSPECT AT MT CB PHASE 4 PLAT#563222;

Schedule Number: R043691